

REMARKS

Claims 1, 3 and 6-41 are currently pending in the application. Independent Claims 1 and 10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wheatley, III et al (U.S. Patent 5,461,639) in view of Bruckert (U.S. Patent 5,751,763). Independent Claims 18, 24 and 30 were rejected under 35 U.S.C. §103(a) as being unpatentable over Bender et al. (U.S. Patent 6,366,778) in view of Bruckert. Also, Claims 36-41 were rejected under 35 U.S.C. §112, second paragraph as being indefinite.

Before addressing the particular rejections, please note that on June 12, 2003 and June 16, 2003, Applicant's Representative, Michael J. Musella, Esq., conducted telephone interviews with the Examiner's supervisor regarding the issue raised in the prior Response with respect to the cited reference, Bender et al., being improper prior art under 35 U.S.C. §102(e)(2). After a short discussion with the Examiner's supervisor, he agreed with Applicant's position, and stated that any and all rejections of the claims based on Bender et al. would be withdrawn. Withdrawal of the rejections of Claims 18-20, 24-26 and 30-32 is therefore warranted.

In addition and based on the removal of Bender et al. as a proper reference, removal of the "Final" marking of the Office Action is also respectfully requested.

Regarding the rejections of Claim 36, 38 and 40 under §112, second paragraph, the Examiner states that the recitation of "inserts the side information into the delay interval" is unclear. To clarify this clause, Claim 36 has been amended to read "and then inserts the side information into the frame within the delay interval." Withdrawal of the rejections of Claims 36, 38 and 40 is respectfully requested.

Regarding independent Claims 1 and 10, the Examiner states that the combination of Wheatley, III et al. and Bruckert discloses all of the elements of the claims. Applicant respectfully disagrees. Each of Claims 1 and 10 recites that the positions of the punctured encoded data symbols is chosen to lessen a channel degradation. The Examiner states that Wheatley, III et al. at col. 8, lines 41-54 discloses this element. This is not the case. Wheatley, III et al. states that performance degradation is actually created by the puncturing process disclosed therein, and the power control method compensates for the

degrading. The claims of the present application are clearly written to recite that the puncturing pattern is set to minimize channel degradation. The puncturing pattern of Wheatley, III et al. is not chosen to lessen channel degradation. Bruckert does not cure this deficiency. Withdrawal of the rejections of Claims 1 and 10 is respectfully requested.

Independent Claims 1, 10, 18, 24 and 30 are believed to be in condition for allowance. Without conceding the patentability per se of dependent Claims 3, 6-9, 11-17, 19-23, 25-29 and 31-41, these are likewise believed to be allowable by virtue of their dependence on their respective amended independent claims. Accordingly, reconsideration and withdrawal of the rejections of dependent Claims 3, 6-9, 11-17, 19-23, 25-29 and 31-41 is respectfully requested.

Accordingly, all of the claims pending in the Application, namely, Claims 1, 3 and 6-41 are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicants' attorney at the number given below.

Respectfully submitted,



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